

ID: CCA-111910-08

Number: **200909042**

Release Date: 2/27/2009

Office:

UILC: 6513.02-00

From:

Sent: November 19, 2008

To:

Cc:

Subject: Credit Elect

was asked to respond to your question below regarding a hardship refund of a credit-elect.

Section 6513(d) specifically provides that that if any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit on the return of estimated tax for such succeeding taxable year) and no claim for credit or refund shall be allowed for the taxable year in which the overpayment arises. As you provided in your memorandum, the Service has issued several administrative rulings that conclude that a taxpayer's election to credit an overpayment of income tax against the estimated tax for the succeeding taxable year is binding and irrevocable. (See, e.g., Rev. Rul. 55-448). While GCM 34620 provides that the Commissioner "may allow amended elections in appropriate cases", the GCM was specifically written in response to a proposed policy statement by the Service which would only allow individual taxpayers to amend such an election. The GCM added that "the exclusion of corporations by the proposed policy statement is a reasonable classification." After this GCM, the Service issued Policy Statement P-2-88. This policy statement specifically provides that a taxpayer who wishes to change such an election in order to have the overpayment refunded may do so "only upon showing that the taxpayer would suffer undue financial hardship". More importantly, the policy statement provides that "refunds in such cases will be limited to individual taxpayers". In addition, IRM 20.2.4.8.4 ("Credit Elect") provides that if "a taxpayer requests permission to change a credit elect to a refund, interest is not allowed on the refund. See Policy Statement P-2-88 for the circumstances in which the credit elect can be reversed."

There is no authority that extends the financial hardship exception in Policy Statement P-2-88 to corporate taxpayers. While you cite Field Service Advisory 1998 FSA 306 (Sept. 3, 1998) in your memorandum for the authority that the financial hardship exception extends to corporations, the FSA is distinguishable from the facts at issue because it deals with an overpayment of employment taxes by a corporation. As stated in the FSA, section 6513(d) specifically applies only to income taxes. Furthermore, there is no indication in the discussion under IRM 21.4.1.4.6 ("Credit Elect Problems") that its discussion of the financial hardship exception expands Policy Statement P-2-88 to include non-individual taxpayers.

Given the facts provided in your draft opinion, we conclude that since the corporate taxpayer reported an income tax overpayment and elected to credit this overpayment to the following taxable year, the taxpayer cannot reverse the election and request a refund for the overpayment in the prior taxable year.

If you have any further questions, please do not hesitate to contact me.

Thanks,